

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
BellSouth Open Network Architecture Plan)	
Amendment)	CC Docket No. 88-2
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MEMORANDUM OPINION AND ORDER

Adopted: March 21, 2003

Released: March 21, 2003

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. This *Memorandum Opinion and Order* addresses an amendment filed by BellSouth Corporation on behalf of BellSouth Telecommunications, Inc. (BellSouth) to its regional Open Network Architecture (ONA) plan. The amendment would remove from that plan several ONA-related services that BellSouth currently offers in its nine-state region.¹ In the Computer III² and

¹ *Filing and Review of Open Network Architecture Plans, BellSouth Open Network Architecture Plan Amendment*, CC Docket No. 88-2 (filed Oct. 31, 2002) (BellSouth's ONA Plan Amendment).

² *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), recon., 2 FCC Rcd 3035 (1997) (*Phase I Recon. Order*), further recon., 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order* and *Phase I Recon. Order* vacated, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), recon. 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), further recon., 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order* vacated, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon., 7 FCC Rcd 909 (1992), pets. for review denied, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), recon. dismissed in part, Order, 11 FCC Rcd 12513 (1996), *BOC Safeguards Order* vacated in part and remanded, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), cert. denied, 115 S.Ct. 1427 (1995); Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*FNPRM*).

ONA³ proceedings, the Commission established a comprehensive regulatory framework – including requirements to maintain ONA and Comparatively Efficient Interconnection plans – to govern participation by Bell Operating Companies (BOCs) in the enhanced services marketplace.⁴ The Commission required each BOC to file a plan describing the unbundled basic services it would provide as ONA services and the terms under which each service would be offered.⁵ In order to modify approved ONA-related services, the Commission also required each BOC to first seek the approval of the Common Carrier Bureau (now Wireline Competition Bureau) by filing an amendment to its ONA plan at least 90 days in advance.⁶

2. In this *Memorandum Opinion and Order*, we grant BellSouth permission to amend its ONA plan to the extent that it removes the following three services: “DataReach,” “ISDN Single Number Routing Option,” and “Uniform Access Numbers for Business Lines” (UNI-Serve). We will address in a subsequent order BellSouth’s request for permission to discontinue three additional services.⁷

3. On October 31, 2002, BellSouth filed to amend its ONA plan to eliminate several identified ONA-related services.⁸ The Commission sought comment on BellSouth’s amendment,⁹ and received none. Most of these services rely on “oddball” central office codes

³ *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), recon., 5 FCC Rcd 3084 (1990) (*BOC ONA Recon. Order*); 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), erratum, 5 FCC Rcd 4045 (1990), pets. for review denied, *California II*, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Recon. Order*); 6 FCC Rcd 7646 (1991) (*BOC ONA Further Amendment Order*); 8 FCC Rcd 2606 (1993) (*BOC ONA Second Further Amendment*), pet. for review denied, *California II*, 4 F.3d 1505 (9th Cir. 1993); *FNPRM*, 13 FCC Rcd 6040 (1998).

⁴ *See BOC ONA Amendment Recon. Order*, 6 FCC Rcd 7646 (1991). ONA requirements also govern GTE. *See Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 1388 (1995).

⁵ *See Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, Order, 11 FCC Rcd 6919 (1996). In a series of orders between 1989 and 1992, the Commission approved the BOC’s ONA plans. *Id.*

⁶ *Phase I Order*, 104 FCC 2d 958, 1068, paras. 221-222 (1986); *BOC ONA Amendment Recon. Order*, 6 FCC Rcd 7646, 7654, para. 13 (1991). *See Computer III Further Remand Proceedings: Bell Operating Company Provision of Advanced Service*, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995).

⁷ These services are “ZipConnect,” “Calling Directory Number Delivery via Bulk Calling Line Identification Detail,” and “Derived Data Channel Service.” *See* BellSouth’s ONA Plan at 4-5, 7-8.

⁸ BellSouth uses four central office codes on a regional basis to provide ONA-related services in its nine-state region, as follows: BellSouth uses central office code 203 to provide two of the services discussed in this order, DataReach, and ISDN Single Number Routing Option, and it uses central office codes 440, 530, and 930 to provide the third service, UNI-Serve. BellSouth’s ONA Plan Amendment at 2. In its region, BellSouth has 420 UNI-Serve customers, one DataReach customer, and no ISDN Single Number Routing Option customers. The majority of customers for these services are in Florida. *See* BellSouth’s ONA Plan Amendment at 4-7.

⁹ *See Pleading Cycle Established for Comments on BellSouth Open Network Architecture Plan Amendment*, CC Docket No. 88-2, Public Notice, DA 02-3463 (rel. Dec. 13, 2002).

203, 440, 530, and 930,¹⁰ which BellSouth must return to the North American Numbering Plan Administrator (NANPA) and which BellSouth may no longer use to provide services.¹¹ In February 2001, BellSouth sought permission from NANPA to duplicate certain codes in connection with an area code split in Florida, and in March 2001, BellSouth sought permission from NANPA to duplicate codes for an area code split in Alabama.¹² NANPA denied both requests.¹³ Subsequently, in July 2001, the Florida Commission permitted temporary duplication of codes 203, 440, and 930 but required BellSouth to release them back to NANPA.¹⁴ Similarly, the Alabama Commission permitted BellSouth to duplicate codes 203, 440, and 530 but directed BellSouth to transition away from these codes.¹⁵

4. In the case of the two services for which it has customers, BellSouth claims that a suitable substitute service is available for affected customers, with whom BellSouth has had close contact during this transition period.¹⁶ Specifically, BellSouth explains that toll-free calling service, or “800 service” is a substitute for UNI-Serve that provides customers with the same functionalities as UNI-Serve would. According to BellSouth, a representative account moving from UNI-Serve to 800 service would expect to see monthly charges for 800 service of

¹⁰ Central office codes generally are unique to a single rate center within an area code, but certain central office codes, known as “oddball” codes, are not associated with a particular rate center within any area code and are often used in every rate center in an area code or even in every area code nationwide. BellSouth’s ONA Plan Amendment at 1-2. Common examples include 800 numbers, 976 numbers, and specific-use numbers such as 911. *See* BellSouth Jan. 24 *Ex Parte* Letter, Attach. 1 at 3-4.

¹¹ BellSouth’s ONA Plan Amendment at 4. The record reflects that BellSouth uses central office codes 203, 204, 440, 530, and 557 in Alabama’s newly-split area codes 334/251. *See* Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Jan. 24, 2003) (BellSouth Jan. 24 *Ex Parte* Letter), Attach. 3. BellSouth uses central office codes 203, 204, 440, 780, and 930 in Florida’s newly-split area codes 904/386 and 561/772. *See* BellSouth Jan. 24 *Ex Parte* Letter, Attach. 1, 2. However, it appears that only codes 203, 440, 530, and 930 are used for BellSouth’s ONA-related services. *See* BellSouth’s ONA Plan Amendment at 1-2.

¹² BellSouth’s ONA Plan Amendment at 2. Duplicating these codes in this manner is necessary to allow customers who are moved to a new area code to continue to receive the services associated with a particular code. *Id.*

¹³ *Id.*

¹⁴ The Florida Commission set specific deadlines for the return of these codes: BellSouth must return codes 440 and 930 by March 31, 2003 and must return code 203 by July 31, 2003. BellSouth’s ONA Plan Amendment at 3; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Feb. 6, 2003).

¹⁵ The Alabama Commission set no specific deadline for the return of codes 203, 440, and 530. BellSouth’s ONA Plan Amendment at 3.

¹⁶ BellSouth’s ONA Plan Amendment at 4-7; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Feb. 5, 2003) (BellSouth Feb. 5 *Ex Parte* Letter) at 1-2; BellSouth Jan. 24 *Ex Parte* Letter, Attach. 4.

approximately \$1050, compared with a UNI-Serve monthly charge of \$1350. With respect to DataReach service, BellSouth's sole customer for the service already subscribes to 800 service, which is a substitute for DataReach that provides the same functionalities.¹⁷

II. DISCUSSION

5. We grant BellSouth's amendment to remove DataReach, ISDN Single Number Routing Option, and UNI-Serve from its ONA plan. We find that the circumstances of this case justify BellSouth's requested relief. As mentioned above, decisions by the Alabama and Florida Commissions would appear to compel BellSouth to discontinue the services that rely on certain codes, which BellSouth must return to NANPA.¹⁸ Moreover, returning these codes to NANPA should ultimately restore tens of thousands of numbers to the available pool in each area code, at a time when the industry is experiencing a shortage of numbers.¹⁹ Given the small amount of customers for these services,²⁰ and the large amount of numbers these services are monopolizing, returning these codes would serve the public interest by allowing these numbering resources to be used in a more efficient manner. In addition, BellSouth has indicated that suitable alternative services currently exist that would duplicate the functions of DataReach and UNI-Serve for existing customers of these services.²¹ Finally, BellSouth's amendment is unopposed. Notably, we received no comments from customers of the services at issue. While we do not favor ONA amendments that remove previously-approved services,²² we conclude that the facts of this case warrant granting BellSouth's amendment.

III. CONCLUSION

6. Consistent with the foregoing, we grant BellSouth's amendment in part, permitting it to remove DataReach, ISDN Single Number Routing Option, and UNI-Serve from its ONA plan.

¹⁷ Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Mar. 6, 2003). BellSouth has no customers for ISDN Single Number Routing Option and, therefore, did not submit information on providing customers with substitute services.

¹⁸ *Cf. Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Memorandum Opinion and Order, 7 FCC Rcd 811, 813, para. 15 (1992) (permitting Bell Atlantic to withhold a service from its ONA plan because the necessary central office code was available only in two of Bell Atlantic's states and because compelling Bell Atlantic to provide the service would remove 10,000 numbers from the capacity of each area code).

¹⁹ BellSouth would be returning approximately 10,000 numbers per code in each area code for these ONA-related services. See BellSouth Jan. 24 *Ex Parte* Letter, Attach. 1; *Numbering Resource Optimization*, Notice of Proposed Rulemaking, 14 FCC Rcd 10322, 10381 (1999).

²⁰ See *supra.*, n.8.

²¹ BellSouth Feb. 5 *Ex Parte* Letter at 2.

²² See *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Memorandum Opinion and Order, 7 FCC Rcd 811, para. 1 (1992).

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 201, 202, 203, 205, 214, and 218 of the Communications Act of 1934, as amended, and sections 0.91, 0.291, 1.3, and 63.71 of the Commission's rules, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 203, 205, 214, 218, and 47 C.F.R. §§ 0.91 0.291, 1.3, 63.71, BellSouth's Open Network Architecture Plan amendment IS GRANTED in part.²³

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau

²³ We waive sections 63.71(a) and (b) of the Commission's rules, 47 C.F.R. §§ 63.71(a),(b), on our own motion, pursuant to section 1.3 of the rules, 47 C.F.R. § 1.3. Section 63.71(a) requires a domestic common carrier seeking to discontinue a telecommunications service to notify all affected customers, using specific language set forth in the rules. Section 63.71(b) requires the carrier to file an application with the Commission seeking authorization to discontinue service. A subsequent 31-day review period allows the Commission to determine whether the carrier has provided affected customers with a reasonable opportunity to obtain alternative services. *See* 47 C.F.R. § 63.71(c). The Commission may grant a waiver of its rules for "good cause." 47 C.F.R. § 1.3. *See Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (the Commission may grant a waiver if special circumstances warrant a departure from the general rule and would serve the public interest); *see also Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970). We find that in this case, waiver of sections 63.71(a) and (b) would serve the public interest and would in no way eviscerate the effectiveness of our discontinuance rules. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 US 1027 (1972). BellSouth timely informed its few affected customers that it would discontinue their current services and transition them to substitute services, and BellSouth worked closely with these customers to assure a smooth transition. BellSouth filed its ONA plan amendment in October 2002, permitting us the past several months to conduct an analysis of consumer impact, as we would do following the filing of a section 63.71 application. Importantly, the services BellSouth proposes to discontinue are ancillary to traditional voice and data services, and discontinuing DataReach, ISDN Single Number Routing Option, or UNI-Serve will not in any way impede customers' ability to receive services such as basic dialtone or DSL service. BellSouth's customers will continue to receive comparable alternative services from BellSouth, with no interruption of service. Thus, waiver of sections 63.71(a) and (b) will not prejudice customers. By contrast, failing to waive sections 63.71(a) and (b) at this time would place BellSouth into direct conflict with the Florida Commission's order to return codes 440 and 930 by March 31, 2003, and would delay further the return of tens of thousands of numbers to NANPA for more efficient use.